

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s):	S. YAMAZAKI, et al.	Group Art Unit:	2872
Serial No.:	10/823,020	Examiner:	James Phan
Filed:	April 12, 2004		
For:	SCANNING OPTICAL SYSTEM		

**PETITION TO WITHDRAW HOLDING OF ABANDONMENT
BASED ON FAILURE TO RECEIVE OFFICE ACTION**

Mail Stop
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

The Applicant hereby requests that the holding of abandonment in the above-identified application be withdrawn on the basis that the Applicant did not receive the Office Action mailed November 4, 2005 (or rather November 1, 2005). In addition, the Applicant requests that the November 4, 2005 Office Action be re-mailed and the time period for response thereto be restarted. No petition fee is believed to be required.

DISCUSSION

On June 22, 2006, the United States Patent and Trademark Office (USPTO) mailed a Notice of Abandonment (PTO-1432) (Exhibit A). The Notice of Abandonment stated that the above-identified application became abandoned on the basis of "Applicant's failure to timely file a proper reply to the Office letter mailed on November 04, 2005." As further discussed below, the Applicant did not receive the November 4, 2005 Office Action.

Section 711.03(c) of the MPEP states, in part, that:

“The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket records where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner’s statement.”

The undersigned hereby states that the Office Action mailed November 4, 2005 (or rather November 1, 2005) has, to date, not been received. The undersigned further states that a search of the file jacket and docket records for this application indicates that the November 4, 2005 Office Action has not been received. A copy of the docket record is attached, as Exhibit B, showing where the November 4, 2005 Office Action would have been indicated had it been received and docketed. Furthermore, it is evident from PAIRS that this Office Action was never delivered but rather was returned to the USPTO as undelivered (Exhibit C).

CONCLUSION

On the basis of the above discussion and the attached documentary evidence (Exhibit B) as well as PAIRS (Exhibit C), the Applicant requests that (1) the holding of abandonment in the above-identified application be withdrawn on the basis that Applicants did not receive the Office Action mailed November 4, 2005, (2) the November 4, 2005 Office Action be re-mailed, and (3) the time period for response thereto be restarted.

AUTHORIZATIONS

The Commissioner is hereby authorized to charge any fees which may be required for the consideration of this paper, or credit any overpayment, to Deposit Account No. 13-4500, Order No. 1232-5377. A DUPLICATE COPY OF THIS SHEET IS ATTACHED.

Respectfully submitted,
MORGAN & FINNEGAN, L.L.P.

Dated: July 13, 2006

By: _____



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3 World Financial Center
New York, NY 10281-2101

EXHIBIT A



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/823,020	04/12/2004	Shoichi Yamazaki	1232-5377	3545
27123	7590	06/22/2006	EXAMINER	
MORGAN & FINNEGAN, L.L.P. 3 WORLD FINANCIAL CENTER NEW YORK, NY 10281-2101			PHAN, JAMES	
			ART UNIT	PAPER NUMBER
			2872	

DATE MAILED: 06/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

DOCKET DEPARTMENT

Docketed By: Am Date: 6/30
Audited By: gm Date: 6/30
Filed By: _____ Date: _____

Notice of Abandonment

Application No.

10/823,020

Examiner

James Phan

Applicant(s)

YAMAZAKI ET AL.


Art Unit

2872

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 04 November 2005.
- (a) ☐ A reply was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____.
- (b) ☐ A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection. (A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
- (c) ☐ A reply was received on _____ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
- (d) ☒ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
- (a) ☐ The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
- (b) ☐ The submitted fee of \$_____ is insufficient. A balance of \$_____ is due.
The issue fee required by 37 CFR 1.18 is \$_____. The publication fee, if required by 37 CFR 1.18(d), is \$_____.
- (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
- (a) ☐ Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
- (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☐ The reason(s) below:


James Phan
Primary Examiner
Art Unit: 2872

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

EXHIBIT B

90/7/06

~~Other 31.225 - con~~

76422, 391	Notice of Marriage
10535, 130	Notice of Marriage of Keph.
10535, 130	Thyng Receipt
10535, 130	Warrant to execute
11946, 265	Warrant Receipt
16368, 163	Warrant Thynng Receipt

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September 9, 2005 - Low
11/20/05 Update Status Receipt

11/7/05

November 10th 2005
11-1-05 33010-167 Cost of Registration
11/7/05 09/455376 Extensive Answer

2005

Deeds & Arts

[illegible]

18/35, 478 by T. Arnold and T. Arnold is granted

EXHIBIT C



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10/823,020

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Available Documents

Mail Room Date	Document Description	Document Category	Page Count
06-22-2006	Abandonment	PROSECUTION	
11-04-2005	Mail returned to USPTO as undelivered	PROSECUTION	
11-01-2005	Requirement for Restriction/Election	PROSECUTION	
11-01-2005	Bibliographic Data Sheet	PROSECUTION	
11-01-2005	Index of Claims	PROSECUTION	
12-15-2004	Change of Address	PROSECUTION	
09-15-2004	Information Disclosure Statement (IDS) Filed	PROSECUTION	
09-15-2004	Foreign Reference	PRIOR ART	
09-15-2004	Foreign Reference	PRIOR ART	
09-15-2004	Foreign Reference	PRIOR ART	
09-15-2004	NPL Documents	PRIOR ART	
06-30-2004	Foreign Priority Papers Filed	PROSECUTION	
04-12-2004	Transmittal letter	PROSECUTION	
04-12-2004	Specification	PROSECUTION	
04-12-2004	Claims	PROSECUTION	
04-12-2004	Abstract	PROSECUTION	
04-12-2004	Drawings	PROSECUTION	
04-12-2004	Oath or Declaration filed	PROSECUTION	
04-12-2004	Application Data Sheet	PROSECUTION	
04-12-2004	Fee Worksheet (PTO-875)	PROSECUTION	
04-12-2004	Fee Worksheet (PTO-875)	PROSECUTION	

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